IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.714 OF 2006

In

WRIT PETITION NO.1338 OF 2006

Shri Sahil Khan : Appellant

(Orig. Petitioner)

V/s.

M/s.Hashmat & Company : Respondent

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Mr.S.N.Deshpande for the appellant.

Mr.V.P.Vaidya for the respondent.

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CORAM : R.M.LODHA & S.A.BOBDE,JJ.

DATE : OCTOBER 3, 2006.

ORAL ORDER (Per R.M. Lodha,J.)

1. On 8.2.1992, seven employees of the respondent were charge-sheeted. The appellant is one of them. The appellant was charged with the following misconduct:-

> "It has been reported that on the 3rd of February, 1992, at about 12:30 P.M. you alongwith Shri Ainul Haq Sikander Khan, Shri Abdul Khaliq, Shri Muslim Shaikh, Shri Vish Kondvilkar and some out-siders have come to the main entrance of our sister concern M/s.Kachins and gheraoed their shop, preventing their customers to go in you get out of the shop. It has been also reported that you have indulged in the shouting of dirty slogans against

partners of M/s.Kachins. Messr. Kachins had to take police help from the tardeo Police Station and you continued the gherao and shouting of dirty slogans till 1:15 p.m. you have continued your gherao and slogan shouting for almost 45 minutes and created a scene in front of messr. Kachins shop and you have left the entrance of messr. Kachins only after the intervention of the police. It has also been reported that you have instigated other workers of your department to have a violent attitude against the supervisors and the management of our company. You have taken a leading part in the gherao and shouting of dirty slogans against the management of our firm and messr. Kachins and created a bad scene and thereby lowered the reputation of our company. You have therefore indulged in the misconducts of riotous, disorderly and indecent behaviour in and near the compound of or (sic) undertaking. You have left the work premises during working hours without permission while indulging in the above said activities. It has also been reported that you are habitually reporting for duty one hour late inspite of our repeated warnings.

You are hereby required to explain in writing why disciplinary action should not be taken against you for the above misconducts within 48 hours of the receipt hereof. The management has decided to hold an enquiry into the above charges and the same is fixed on the 26th of February, 1992 at 10:30 a.m. at the premises of the undertaking. You are required to remain present at the enquiry at the appointed day and time with all evidence in your favour, where you will (sic) given full opportunity to defend yourself by a person of your choice as per law.

If you fail to remain present in the enquiry, at the appointed above mentioned day and time, the same will be held ex-parte against you and whatever decision taken in such ex-parte enquiry will be at your cost and consequences and will be also binding on you.

You are hereby suspended for the pending enquiry with immediate effect."

2. The appellant responded to the charge-sheet by sending the reply on 10.2.2992. He denied the charges in his reply thus:-

> "I deny that I have on 3rd February, 1992 at about 12:30 p.m. along with Sahil Khan and others gherao the sister concern M/s.Kachin's and prevented the customers to go out and get out of the shop.
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> I also deny that I have shouted dirty slogans against the partners of Kachin's. I submit that there was peaceful demonstration during our lunch recess in support of our grievances of non-payment of arrears. I say that the demonstration was peaceful and had done for about 10 minutes. In the meantime you have assured the demonstrators about the payment within a day or two and accordingly, the demonstration has been withdrawn.
>
> I, therefore sat (sic) that there is no dirty slogans shouting and any sort of riotus, disorderly and indiscipline behaviour in and around the compound. I also deny that I have left work remises (sic) during working hours without permission."

3. The Inquiry Officer enquired into the misconduct of all the seven employees by holding a common inquiry and in his report dated 21.4.1992 held that: (i) the demonstration on 3.2.1992 at 12.30 p.m. was staged by the charge-sheeted employees during working hours; (ii) the charge-sheeted persons left their place of work at 12 o' clock without taking prior permission or leave of the management prior to the said demonstration on 3.2.1992; (iii) the demonstration and shouting of slogans and

gheraoing of the sister concern (Kachins' shop) went on for nearly 45 minutes; (iv) there was no justification for the workers to stage the demonstration; (v) by giving abusive slogans, the charge-sheeted employees indulged in making baseless and untrue charges against the partners of not only of Hasmat & Co., but of M/s.Kachins; (vi) the demonstration on 3.2.1992 was neither peaceful nor justifiable and had adverse effect on the business activity of M/s.Kachins, which is the sister concern of Hasmat & Co.; and (vii) the acts of the charge-sheeted employees amounted to riotous, disorderly and indecent behaviour. The Inquiry Officer thus concluded that the charges against the charge-sheeted employees (appellant being one of them) have been sufficiently established and proved.

4. The employer accepting the findings of the Inquiry Officer, by the order dated 27.4.1992, ordered dismissal of the appellant.

5. The industrial dispute concerning the dismissal of the appellant was referred to the Judge, VIIth Labour Court, Mumbai. In his Part-I award, the Judge, VIIth Labour Court, held that the inquiry against the appellant was fair, proper and legal. By the award dated 11.7.2005, the concerned Labour labour held that no

interference is called for in the order of punishment as the acts of misconduct have been fully proved. The appellant filed a Writ Petition before this Court which was dismissed by the learned single Judge at the admission stage, by order dated 12.6.2006. This is how the present appeal has been preferred.

6. Two-fold submission was advanced by the counsel for the appellant in assailing the impugned order. The first submission is that subsistence allowance was not paid during the course of the inquiry and, therefore, the appellant cannot be said to have a fair opportunity to defend himself and second, that the punishment awarded by the employer was disproportionate to the charges proved against him. The counsel submitted that calling the employer 'thief' in the demonstration is not taken seriously nor is such fact taken in its literary sense. He relied upon the judgement of the single Judge of this Court in the case of Blaze Advertising (P) Ltd. v. Blaze Advertising and Allied Companies Employees' Union (1985 II L.L.N. 316).

7. Adverting to the first contention first, suffice it to say that the appellant has not disputed that during the course of the inquiry, the subsistence allowance was paid to him. His grievance is that it was paid

belatedly. On 1.4.1992 the employer indicated to the appellant that they have decided to pay subsistence allowance to him on account at the rate of Rs.1,000/-, without prejudice to their contentions. The inquiry was instituted in the month of February 1992 and much before the conclusion of the inquiry, subsistence allowance was paid by the employer to the appellant. In these facts, it cannot be said that by delayed payment of subsistence allowance, though it was paid during the course of the inquiry, the appellant did not have a fair opportunity to defend himself. We find no unfairness in the inquiry. The first contention is over-ruled.

8. Insofar as the second contention of the counsel for the appellant is concerned, we find that in the inquiry, it has been sufficiently proved that the appellant indulged in acts of riotous, disorderly and indecent behaviour in and around the employer’s compound on 3.2.1992 and also raised dirty slogans against the employer and its partners. Besides that, as indicated above, in the inquiry, it was proved against the appellant that the demonstration was held during working hours at the sister concern of the employer and that the appellant left his place of work by 12 o’ clock on 3.2.1992 without taking prior permission. The slogans during the course of demonstration to which the appellant

was a party have been found to be of an inflammatory character by the Inquiry Officer and accepted by the Inquiry Officers. The Labour Court found no justifiable ground to take a different view from that of the Inquiry Officer. We hardly find any justification to hold otherwise.

9. In Blaze Advertising's case, the learned single Judge of this Court in para 13 held thus:-

> "13. In the first instance, as far as the slogans are concerned, there is nothing abusive in the sense in which that word is understood. It is now a matter of common knowledge that the words like "thief" or "class one thief" which are hurled by the workers at their employer are not to be taken nor are they in fact taken in their literary sense. They are used figuratively to suggest that things due to the workmen are withheld by the employer. Both the industrial world as well as the society at large are by now familiar with such slogans and they carry no misconceptions about them. This is the only so-called abuse which was uttered by the demonstrations in their slogans. By the other slogan the general manager was accused of having ruined the petitioner's company. This can hardly be called an abusive slogan. As regards violence, the most that the witness has stated is that the demonstrators were pressing against the glass door of the theatre
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> "so that the slogans and abuses could be heard in the auditorium."
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> The allegation is not that they were trying to rush to the auditorium or even beyond the glass door. The only intention in pressing the glass door was, to make audible their slogans in the auditorium. However, the

> witness has admitted that the slogans could not be heard in the auditorium. There is no other incident of violence referred to by the witness. Therefore, on the basis of his testimony alone one can come to the conclusion that the demonstration was neither violent nor disorderly as to take it out of the protection of Arts. 19(1)(a) and 19(1)(b) of the Constitution. The letter written to the police station on the next day has merely alleged disorderly and indecent behaviour of the demonstrators without giving any details of such behaviour. Since we have the testimony of the witness himself, it is apparent that the so-called disorderly and indecent behaviour had not travelled beyond shouting the slogans in question and trying to press open the glass door in order that the slogans may be heard in the auditorium. The notice put up on the notice board on 8 June 1983, merely repeats what has been stated in the letter addressed to the police station. This is all the evidence that we have with regard to the demonstrations staged on 7 June 1983. The Industrial Court has, therefore, rightly come to the conclusion that this demonstration did not amount to unfair labour practice."

We are afraid, the said judgement cannot be said to be laying down the correct legal position that when the workers hurl slogans like ‘the employer is thief’, it is not taken as it is. If the employee calls the employer by name or hurls abuses like the employer is ‘chor’ or ‘thief’, how can an inference be drawn that the employee never meant that and such abuses are used figuratively to suggest that things due to the workmen are withheld by the employer. Calling the employer ‘thief’ or ‘chor’ is a serious abuse by an employee or group of employees and cannot be treated lightly. The learned single Judge was

not correct in holding in Blaze Advertising's case that the words "thief" or "class one thief" which are hurled by the workers at their employer are not to be taken in their literary sense and the industrial world and the society at large are by now familiar with such slogans and they carry no misconceptions about them.

10. We have no hesitation in holding that the decision in Blaze Advertising's case cannot be said to lay down the correct law with regard to the use of the words like "thief" or "class one thief" hurled by the workers at their employer during the course of the demonstration.

11. Besides that, it would be seen that insofar as the present case is concerned, the Inquiry Officer held that the abuses hurled during the course of the demonstration were so indecent that he did not feel it like to record such abuses in the inquiry.

12. In the case of this nature where serious allegations of the employee indulging in acts of riotous, disorderly and indecent behaviour as well as raising dirty slogans during the course of the demonstration have been very well proved and such demonstration and abuses have potential of disturbing the industrial peace, it cannot be said by any stretch of imagination that the punishment

of dismissal is grossly disproportionate to the charges proved.

13. Appeal has no merit and is dismissed.

Sd/-

R.M. LODHA, J.

Sd/-

S.A. BOBDE, J.